In the Matter of the Trusts of the Will of HADJEE HAROUN BIN TAMBY KECHIK (deceased).

[Orig. Civil Juris. (Gordon-Smith, Ag. C.J.)
February 21, 1949]

[Singapore — Originating Summons No. 170 of 1948]

Will — Construction — Rule against Perpetuities — Wakaff — Charity — Evidence Ordinance S. 101.

Clause 2 of the Will of Hadjee Haroun bin Tamby Kechik (deceased) was as follows:—

> "I direct in the cause of God and in the hope of recompense from Him that my houses, Nos. 39, 40 and 41 Klang Road together with their lands, be made a Wakaff for the benefit of my wife, Inche Mah binti Mahmood and my sons and daughters, to be shared equally between them. In the event of all of them shall die, the benefit of the Wakaff shall descend to all my male and female grand-children in the male line to be shared equally between them. After them the benefit of the Wakaff shall pass to the most learned and pious man in this country. This shall go on for ever. I appoint the said Executors as Trustees of the said Wakaff. After this, my nearest and most intelligent heir shall be the Trustee of the said Wakaff. This shall go for ever".

An Originating Summons was taken out for the determination of the following questions:—

(1) Whether the trusts relating to the land and houses known as Nos. 39, 40 and 41 Klang Road, Singapore are void as infringing the rule against perpetuities.

(2) If so whether the said land and houses fall into the residue to be divided according to Clause VI of the said Will.

Held, (1) that the gift over after the deaths of the widow, children and grandchildren offends against the Perpetuity Rule and that such gift is not a charitable gift and is also void for uncertainty and vagueness; (2) that the life interest to the widow and children of the testator is good and that upon the determination of these estates the beneficial interests fall into and form part of the residue of the estate to be disposed of in accordance with Clause 6 of the Will.

Cases referred to:—

(1) *Ong Cheng Neo v. Yeap Cheah Neo* 1 Kyshe 344.

(2) *Chamberlayne v. Brockett* L.R. 8 Ch. 206.

(3) *In re Lord Stratheden and Campbell* (1894) 3 Ch. 265.

(4) *In the Matter of the Will and Trust Deed of Syed Shaik bin Abdul Rahman Alkaff* (unreported) Singapore Civil Suit No. 145 of 1922.

(5) *Ashabee and others v. Mahomed Hashim and another* 4 Kyshe 213.

ORIGINATING SUMMONS.

Ahmad bin Ibrahim for the Plaintiff.

B. H. Chia for the Defendant.

L. Rayner (Crown Counsel) for the Attorney-General.

Gordon-Smith, Ag. C. J.: — This Originating Summons involves the interpretation and construction of the Will of Hadjee Haroun bin Tamby Kechik, deceased, and asks:—

(1) Whether the trusts relating to the land and houses known as Nos. 39, 40 and 41 Klang Road, Singapore are void as infringing the rules against perpetuities;

(2) If so, whether the said land and houses fall into the residue to be divided according to Clause VI of the said Will.

The Will in question is dated the 11th December 1903, the Testator died on the following 31st December and Probate of the Will was granted on the 8th February 1904 to Mohamed bin Tamby Kechik, the deceased's brother and the Executor and Trustee therein named. The present Plaintiff is a grandchild of the deceased, and the Defendant obtained a grant of Letters of Administration *de bonis non* with the Will annexed on the 9th March 1934. In case of any doubts arising and by consent of all parties I appointed the present Defendant Hadjee Hussain bin Hadjee Haroun to be the Executor and Trustee of the Will.

The material and relevant clauses in the Will, read as follows:—

Clause II. "I direct in the cause of God and in the hope of recompense from Him that my houses, Nos. 39, 40 and 41 Klang Road together with their lands, be made a Wakaff for the benefit of my wife, Inche Mah binti Mahmood and my sons and daughters, to be shared equally between them. In the event of all of them shall die, the benefit of the **Wakaff** shall descend to all my male and female grandchildren in the male line to be shared equally between them. After them the benefit of the **Wakaff** shall pass to the most learned and pious man in this country. This shall go on forever. I appoint the said Executors as Trustees of the said **Wakaff**. After this, my nearest and most intelligent heir shall be the Trustee of the said **Wakaff**. This shall go on forever."

Clause VI. "The rest and residue of my estate property shall be distributed to my beneficiaries in accordance with the Mohamedan Law. All that has been mentioned in this Will has been uttered by me personally with clear utterance, and I have hereunto set my hand in the presence of Witnesses."

It is not, and cannot be, disputed that English law applies in the construction of this Will. (See Section 101, Evidence Ordinance, Cap. 13). It is not and cannot be disputed that the Rule against Perpetuities is also applicable. (See *Ong Cheng Neo v. Yeap Cheah Neo*[1], in the Privy Council)[1] Two points

therefore arise which in general terms can be stated as follows :—.

(a) Does clause two offend against the Perpetuity Rule?

(b) Is the gift over, that is, after the deaths of the children and grandchildren does the benefit of the Wakaff pass "to the most learned and pious man in this country", validly, as being good charitable bequest.

As regards (a) the Rule is that, subject to certain exceptions, no contingent or executory interest in property can be validly created, unless it must necessarily vest within the maximum period of one or more lives in being and 21 years afterwards. Consequently a devise or bequest not falling within one of the exceptions is void if it is to take effect on the happening of an event at some indefinite future time or within a fixed period exceeding 21 years; for it is not necessary that the period within which the interest is to vest should be limited with reference to a life.

It is quite clear that the provision for the benefit of the *Wakf* passing on "to the most learned and pious man in the country" after the deaths of the sons and daughters of the Testator and also of his grandchildren, offends against the Perpetuity Rule. A gift over to a charity conditional upon a future and uncertain event which may not happen within the period allowed by the Rule is void *Chamberlayne v. Brockett*[2] and *In re Lord Stratheden and Campbell*[3]. It follows that the vesting is postponed beyond the Perpetuity Rule limit, i.e. after the deaths of grandchildren. There are also further reasons for holding that the gift over is bad. The mere creation of a *Wakf* does not necessarily imply that the objects intended to be benefitted thereby are charitable objects. Many cases of *Wakf* dedication that came before me in Palestine could not, by any stretch of imagination, have been deemed to be dedications for charitable objects. Such fact is confirmed in the unreported case of Suit No. 145 of 1922[4] in the Court of Appeal in the Judgments of Whitley J. and Barrett-Lennard J. and by Sheriff J. in *Ashabee and Others v. Mahomed Hashim and Another*[5]. Neither is it possible to apply the cy-pres doctrine. It is unnecessary, I think, to go into the other various authorities quoted to me as I am quite clearly of the opinion that the gift over after the deaths of the widow, children and grandchildren offends against the Perpetuity Rule, and that such gift over is not a charitable gift, and is also bad for uncertainty and vagueness.

The life interest to the widow and children of the Testator is good and upon determination of these estates, the beneficial interests fall into and form part of the residue of the estate to be disposed of in accordance with Clause 6 of the Will. There will be an order accordingly and the costs as between solicitor and client of all parties will come out of the estate.

Order Accordingly.

In the Estate of CHOO KIM KIEW, deceased: CHUA KENG GEOK and others v. BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD.

[Orig. Civil Juris. (Taylor, J.) March 29, 1949]

[Singapore — Civil Suit No. 126 of 1948]

Wills Ordinance, Ss. 15 and 16 — Alteration in Will — Requirements for revocation of will or part of will.

In this case it appeared that the testator after making his will wished to make certain alterations in it. She made the alterations in the Will and put her initials and the date, but the alterations were not signed or initialled by any witness. The testatrix subsequently died and the Executors propounded the Will. The original words in the Will were still clearly legible and the question was whether the Will was operative as originally drawn or as altered by the testatrix.

Held, (1) that by virtue of Section 16 of the Wills Ordinance and as the testatrix had not rendered illegible the words no longer desired by her and had not signed her deletions or had her initialling thereof witnessed, the alterations in the Will were not valid; (2) that therefore the Will ought to be admitted to probate retaining the smudged but still legible words.

PROBATE SUIT.

John Eber for the Plaintiffs.

K. A. Seth for the Defendants.

Taylor, J. : — This Probate action raises what Counsel described as a unique problem in the construction of a statute.

The facts are simple and undisputed. The testatrix made her Will in 1937; it was drawn by her Solicitor, Mr. R. L. Eber, and duly attested by him and his clerk.

In 1941, she consulted him with a view to making a fresh Will. The main change in the dispositions which she contemplated was the omission of certain gifts to her adopted son. In August 1941, she handed the Will to Mr. Eber having struck out the name of the adopted son in three places, adding her initials and in one place the date, 8th July 1941, but the alterations are not signed or initialled by any witness. In each place the original words are still clearly legible. The testatrix did not, however, give any definite instructions but went away to consider the matter further. The Will remained in Mr. Eber's office.